

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1624 of 1997

in

MISC. CIVIL APPLICATION No 1643 of 1996

in

Special Civil Applicaiton No.4488 of 1984,

with

Civil Application No.12477 of 1997

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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VADODARA SWAMINARAYAN MANDIR GAUSHALA TRUST

Versus

DECEASED RAMANBHAI PARBATBHAI  
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Appearance:

MR JITENDRA M PATEL for Appellants

MR MC BHATT for Respondent No. 1  
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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and  
MR.JUSTICE B.C.PATEL

Date of decision: 28/03/2000

C.A.V. JUDGEMENT: (Per B.C. Patel, J.)

1. The Trust known as "Vadodara Swaminarayan Mandir Gaushala Trust", through its Trustees, has challenged the order passed by learned Single Judge on 24.10.1997, rejecting the application to condone the delay caused in bringing the heirs and legal representatives of the respondent of the Special Civil Application on record and also rejecting the prayer to set aside abatement of the petition.

2. The relevant facts, which are required to be considered for the disposal of this Appeal, are as under :-

Against the common order made by the Gujarat Revenue Tribunal in Revision Application Nos. TEN.B.A. 1164 of 1979 and 1165 of 1979, Special Civil Application Nos.2335 of 1984 and 4488 of 1984 were preferred before this Court. The Court issued Rule in both the matters.

3. So far as Special Civil Application No.2335 of 1984 is concerned, the learned Single Judge heard the application on 3.9.1996, allowed the application and quashed and set aside the order of the Gujarat Revenue Tribunal made in Revision Application Nos.TEN.B.A. 1164 of 1979 and 1165 of 1979. Thus, by allowing the aforesaid Special Civil Application, in fact, the learned Judge has quashed the order made by the Tribunal passed in two different applications.

4. So far as Special Civil Application No.4488 of 1984 is concerned, the petitioners challenged the order passed in Revision Application No.TEN.B.A.No.1165 of 1979. On 1.8.1996, the learned Single Judge, while disposing of the petition as abated, granted liberty to the petitioners to file an application for setting aside the abatement and for bringing on record the heirs and legal representatives of the deceased respondent. It appears that, soon thereafter, on 4.9.1996, an application was made for bringing Respondents Nos. 1/1 to 1/5 as heirs and legal representatives of the deceased, with a request to amend the record accordingly. The learned Single Judge expressed an opinion that despite the fact that the respondent died in the year 1991, no steps were taken to bring the heirs on record.

Some proceedings were initiated before the Mamlatdar in the year 1993 and, therefore, it was contended that the petitioners were aware about the fact of death of the respondent. The petitioners have tried to explain that a Swamy, working as 'Kothari', who was looking after the day-to-day affairs, was transferred and, therefore, obviously, it may not have been known to the person, who took over charge subsequently as 'Kothari'. It was also submitted that the courts should be liberal while considering the question of condonation of delay. Attention of the learned Single Judge was drawn to the decisions of the Apex Court, in the case of State of Haryana v. Chandra Mani, reported in JT 1996(3) SC 371, and in the case of Puransingh v. State of Punjab, reported in AIR 1996 SC 1092.

5. On behalf of the respondents, it was suggested that the Advocate appearing in the matter for the petitioners ought to have realized that the respondent expired much earlier. As the learned Advocate appearing for the respondent subsequently was not in a position to appear, the Court issued notice, which was returned with remarks 'expired'. The Registry placed the matter before the Court on 24th February, 1993 and the Court directed to make an application. However, the application was not made.

6. Therefore, from the aforesaid circumstances, it is clear that, subsequently, it was brought to the notice of the Advocate that the respondent has expired. It is also clear from the order that despite the specific order, no application was made. We are of the view that, in the instant case, when the learned Single Judge hearing the application, being Special Civil Application No.2335 of 1984, has quashed and set aside the order passed in both the Revision Applications, the Court ought to have, considering that aspect, allowed the application. By allowing the aforesaid application, the Court would give a chance to the petitioners to address the court on merits and if he has a good case, the Court will have to consider the same. Once the learned Judge, passing an order in Special Civil Application No.2335 of 1984, has set aside the order made in both the Revision Applications, in our opinion, it would have been just and proper to allow the application with a view to see that conflicting findings may not operate in the same matter. It is under these circumstances, the appeal is required to be allowed.

7. Learned counsel appearing for the respondents submitted that as a consequence of the abatement of the

appeal, the matter is to be remanded for adjudication. The Mamlatdar will have to hold a fresh enquiry. It is required to be noted that the Tribunal has proceeded on the basis that the power-of-attorney holder has no right to prosecute the proceedings on behalf of the Board of Trustees and, therefore, the evidence, which was placed on record, was objected. The decision of the Tribunal was considered by the learned Single Judge in one of the matters, i.e. in the cognate matter and, therefore, we do not propose to say anything on the merits of the matter as the matter will be required to be heard by the learned Single Judge in view of the order which we have passed.

8. Accordingly, the Appeal stands allowed. Interim relief granted during the pendency of the Special Civil Application, therefore, shall operate. However, in the facts and circumstances of the case, order with regard to costs is not disturbed.

March 28, 2000 ( D.M. Dharmadhikari, C.J. )

( B.C. Patel, J. )

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(apj)